

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

:

v.

:

CRIM. NO. 3:99CR264(AHN)

LUKE JONES

:

RULING ON MOTIONS TO SUPPRESS

In the Fifth Superseding Indictment, the government charged Defendant Luke Jones with, among other things, narcotics trafficking, murder, conspiracy, and other racketeering offenses that were allegedly committed while he functioned with other defendants as an "Enterprise" under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. Subsequently, the government issued a Sixth Superseding Indictment (the "Indictment") which charged him with committing two murders as Violent Crimes In Aid Of Racketeering ("VICAR") pursuant to 18 U.S.C. § 1959(a).

Presently pending before the court are Jones's motions to suppress physical evidence taken from him on October 22, 1998; February 27, 1999; June 9, 1999; and July 13, 1999. For the following reasons, the motions to suppress [docs. # 986, 988, 990, and 992] are DENIED.¹

¹ Before trial commenced on October 14, 2003, the court denied these motions from the bench and indicated that a written ruling would follow.

FACTS

On July 25, 2002, the court held an evidentiary hearing on Jones's motions to suppress the physical evidence.² The government presented the testimony of Officer Brian Fitzgerald and Sgt. Christopher LaMaine of the Bridgeport Police Department ("BPD"). Jones did not offer any witnesses. Based on the testimony presented at this hearing, the court finds the following facts.

Seizure on October 22, 1998:

On October 22, 1998, Officer Fitzgerald was patrolling the P.T. Barnum Housing Project ("P.T. Barnum"). Observing a silver Toyota Camry pass him at a high rate of speed, the officer followed the vehicle toward St. Steven's Road and caught up to it on Fairfield Avenue. At that time, he could see the driver in the Camry, but the heavily tinted windows obscured his view of the vehicle's interior. The vehicle then pulled onto Interstate 95 at Fairfield Avenue and repeatedly changed lanes in an apparent attempt to evade the officer.

Officer Fitzgerald suspected that the Toyota Camry may have been stolen and ran a computerized motor vehicle records check. After learning that the car was not registered with

² Shortly after this hearing was held, the instant case was stayed and these motions were held in abeyance.

the Connecticut Department of Motor Vehicles, he called the BPD for back-up. When another patrol unit arrived, he proceeded to turn on his overhead lights and siren to indicate that the Camry should pull over. The vehicle pulled over to the side of the road, and the driver placed his hands outside the car window. (Tr. at 59-60.)

As Officer Fitzgerald approached the driver's side of the car, he observed a bulky, unidentifiable item protruding from beneath the shoulder area of the driver's shirt. The bulky item appeared to be the butt of a rifle. The driver, Luke Jones, was removed from the vehicle and patted down for weapons. During this process, the officer observed that Jones was wearing a ballistic or "bullet-proof" vest (or "body armor"). (Tr. at 60-63.) Officer Fitzgerald asked Jones if he had ever been convicted of a serious felony. Jones responded that he had a manslaughter conviction, and that he had previously been arrested for wearing a bullet-proof vest. (Tr. at 63.)

Officer Fitzgerald radioed the BPD and asked it to conduct a criminal record check on Jones; the BPD confirmed that he had been convicted of manslaughter. The officer then placed Jones under arrest and charged him with Unlawful Possession of Body Armor by a Convicted Felon in violation of

Connecticut Public Act 98-127. He also cited Jones for Operating a Vehicle with Obstruction-View Tinted Windows in violation of Connecticut Public Act 14-99. The ballistic vest was seized as evidence. (Tr. at 63-64.)

Arrest and Seizure on February 27, 1999:

On February 27, 1999, Officer Fitzgerald was patrolling P.T. Barnum when he observed in front of building 10 an unoccupied, parked silver Toyota Camry with the engine running. After he got out of his squad car to check on the vehicle, Jones came out of a building and identified the Camry as his car. The officer observed that Jones was wearing a ballistic vest beneath his shirt and recognized him as Luke Jones, the individual who he had previously arrested for illegally wearing body armor. Jones explained that he wore the vest because people wanted to kill him. Officer Fitzgerald arrested Jones and seized the ballistic vest from his person. (Tr. at 64, 67-69.)

Arrest and Seizure on June 9, 1999:

On June 9, 1999, BPD Sgt. Christopher LaMaine and a number of other police officers learned that two males were loitering in the area of Building 17 at P.T. Barnum where a sign indicated "No Trespassing." Sgt. LaMaine and Officer Duncan approached and observed that the two men were Luke and

Lance Jones. They appeared to be wearing a large bulky items underneath their clothing. The officers knew from previous encounters with these men that they were convicted felons and frequently wore bullet-proof vests. After observing Lance Jones make an aggressive movement in the direction of his pants pocket, the officers conducted a pat-down of the Joneses' outer clothing and determined that they were wearing ballistic vests in violation of Connecticut Public Act 98-127. (Tr. 33-39.) While patting down Lance Jones, the officer felt the contours of an object that the officer recognized as an ammunition "clip" that is inserted into the base of a semi-automatic handgun. At the officers' direction, Lance Jones removed a magazine containing sixteen rounds of ammunition. The officers then placed Lance Jones under arrest. (Tr. at 39-40.)

Sgt. LaMaine patted down Luke Jones and felt the Velcro straps and contours of a ballistic vest through his clothing. The officers placed him under arrest, and the ballistic vest was seized from his person. Both Luke and Lance Jones were charged with Possession of Body Armor by a Convicted Felon in violation of Connecticut General Statutes § 53a-107. (Tr. at 40-42.)

Arrest and Seizure on July 13, 1999:

On July 13, 1999, Sgt. LaMaine was in P.T. Barnum when an anonymous complainant approached him and stated that Jones was in possession of a firearm and had been shooting numerous people. Sgt. LaMaine knew of Luke Jones from prior arrests as well as from conversations with fellow officers and P.T. Barnum residents. Consequently, Sgt. LaMaine knew that Jones was potentially armed and dangerous. (Tr. at 10-11, 13-14.)

In the area of Building 8, Sgt. LaMaine observed Luke Jones standing in the company of approximately eight other people. The officer drove past the group and saw that Jones appeared to have a large bulge in the small of his back on the right side of his waist. Based upon the location of the bulge, Jones's criminal history and reputation, and Sgt. LaMaine's training and experience, Sgt. LaMaine believed that Jones may have been carrying a firearm. (Tr. 15-16.)

Sgt. LaMaine parked his car, kept Jones in sight, and called for back-up. As he was waiting for back-up to arrive, Sgt. LaMaine observed Jones looking in his direction and turning the right side of his body away from Sgt. LaMaine. In fact, Jones stood behind a car so that Sgt. LaMaine could not see his waistband. Sgt. LaMaine concluded that Jones was trying to conceal that part of his body from him. (Tr. 17-18.)

While the officer was waiting for back-up, Jones sat in a purple Dodge car. When a black, Ford Expedition drove up next to the purple Dodge, Jones exited the Dodge and entered the back seat of the black Ford Expedition. After the Ford Expedition drove away, Sgt. LaMaine followed and stopped it. (Tr. at 18-19.) When another officer arrived, Sgt. LaMaine approached the vehicle, removed Jones from the rear seat, and patted him down for weapons. During the pat-down, he observed that a ballistic vest was lying on the seat next to where Jones had just been sitting. Jones was the only person in the rear of the vehicle. (Tr. 19-20.)

As Sgt. LaMaine continued with the pat-down, Jones became angry and abusive toward LaMaine and his fellow officers. They placed him under arrest and searched the rear seat area of the vehicle. The officers recovered a loaded, twenty-five-round magazine containing 21 rounds of ammunition. The police also found two radio police scanners and a pair of black leather gloves. (Tr. at 20-22, 24.)

The officers determined that Lyle T. Jones, Jr., had been driving the vehicle, and Leonard T. Jones was riding in the front passenger seat. (Tr. at 22.)

DISCUSSION

Jones maintains that the actions of Sgt. LaMaine and Officer Fitzgerald on October 22, 1998; February 27, 1999; June 9, 1999; and July 13, 1999, constituted an illegal seizure in violation of his Fourth Amendment rights because these officers lacked probable cause to arrest him. This contention is without merit. The court finds that these officers had probable cause to arrest Jones on each occasion and to search him incident to those arrests. The court also finds that the property seized pursuant to Jones's arrests was lawfully obtained.

I. Applicable Law

It is well established that an arrest without a warrant is valid if it is supported by probable cause. Wong Sun v. United States, 371 U.S. 471, 479 (1963). Probable cause exists where "the facts and circumstances within [the officer's] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." See Brinegar v. United States, 338 U.S. 160, 175-76 (1949). In other words, probable cause arises when the police reasonably believe that "an offense has been or is being committed." United States v.

Cruz, 834 F.2d 47, 50 (2d Cir. 1987), cert. denied, 484 U.S. 1077 (1988). Moreover, "where law enforcement authorities are cooperating in an investigation . . . , the knowledge of [an officer] is presumed to be shared by all." Calamia v. City of New York, 879 F.2d 1025, 1032 (2d Cir. 1989) (citing Illinois v. Andreas, 463 U.S. 765, 711 n.5 (1983)).

Furthermore, officers can stop and question a suspect if they have reasonable suspicion of unlawful conduct. Terry v. Ohio, 392 U.S. 1 (1968). Under Terry, a police officer is free to approach a person in public and ask questions while taking objectively reasonable steps to protect himself and others in view of the dangers that the officer's judgment and experience indicate might exist. See Florida v. Royer, 460 U.S. 491, 497 (1983); United States v. Barrios-Moriera, 872 F.2d 12, 15 (2d Cir. 1989).

II. Conclusions of Law

A. The Officers Had Probable Cause to Arrest Jones on the Dates in Question

Based on its factual findings above, the court finds that the officers who arrested Luke Jones on October 22, 1998, February 27, 1999, June 6, 1999, and July 13, 1999, acted reasonably and had probable cause to arrest Jones. More specifically, the court finds that after Officer Fitzgerald

observed Jones wearing a bullet-proof vest on October 22, 1998, and February 27, 1999, Officer Fitzgerald had probable cause to arrest Jones for Possession of Illegal Body Armor in violation of Connecticut General Statutes § 53a-217(d). Similarly, the court finds that on June 9, 1999, and July 13, 1999, Sgt. LaMaine had a reasonable articulable suspicion to approach Jones and investigate possible criminal violations for Illegal Possession of Body Armor. Upon completing these investigations, Sgt. LaMaine had probable cause to arrest Jones for Possession of Illegal Body Armor and to search him incident to arrest.

B. The Property Recovered Incident to the Defendant's Arrest Was Lawfully Obtained

Finally, the court finds that the evidence seized from Jones was lawfully obtained. Once Jones was lawfully stopped, detained, and placed under arrest, the officers were justified in patting down the other clothing of the defendants in order to conduct their investigation in safety. United States v. Paulino, 850 F.2d 93, 98 (2d Cir. 1988) (defendant's furtive movements provided a legal basis for a protective search). Both Officer Fitzgerald and Sgt. LaMaine properly approached Jones to investigate possible illegal body armor violations. Under the plain "feel" extension of the plain view doctrine,

the officers lawfully conducted pat-downs of Jones's person and determined that he was in possession of contraband. See Minnesota v. Dickerson, 508 U.S. 366, 367 (1993) ("[I]f an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons.").

In sum, the officers had probable cause to arrest the defendants on the dates in question, and lawfully obtained the physical evidence seized incident to the arrest.

CONCLUSION

For the foregoing reasons, Jones's motions to suppress [docs. # 986, 988, 990, and 992] are DENIED.

SO ORDERED this _____ day of October, 2003, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge